

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CASE NO. 1:01cv00469-WOB**

STEVE A. LEDFORD, ET AL

PLAINTIFFS

v.

ORDER

CITY OF CINCINNATI, ET AL

DEFENDANTS

This matter is before the court on defendants' motion for summary judgment (Doc. #11).

The court heard oral argument in this matter on Thursday, December 2, 2004. John Helbling and Mark Tillar represented the plaintiffs. Thomas Harris, III represented defendants City of Cincinnati and Thomas Streicher, Jr. Donald Hardin represented defendant Donald Elsaesser. Official court reporter Joan Averdick recorded the proceedings.

Having reviewed this matter and heard the parties, the court concludes that there are genuine issues of material fact on plaintiffs' claims against Officer Elsaesser and on his defense of qualified immunity. The facts are in dispute regarding the circumstances of the officer's initial confrontation with plaintiff Steve Ledford such that a triable issue is raised as to whether Officer Elsaesser had reasonable suspicion to justify the ordered investigatory detention of plaintiff. Second, the material facts are in dispute as to whether plaintiff was resisting the police so as to justify his arrest on those grounds.

Third, the court concludes that there are triable issues as to whether Officer Elsaesser's use of mace was reasonably necessary to subdue plaintiff, given the conflicting testimony as to the nature of the events that transpired immediately before and after his arrest. Plaintiff testified that while he was walking away from the building, he was violently tackled by a group of officers who subsequently handcuffed him and then rolled him over onto his back, after which

Officer Elsaesser sprayed him with mace. Officer Elsaesser testified that plaintiff fell down while attempting to run from the scene, at which point the officers attempted to apprehend him. According to Elsaesser, a struggle ensued when plaintiff resisted arrest, and he was maced prior to being handcuffed in an effort to subdue him.

Finally, however, the court concludes that plaintiffs have raised no triable issue on their claims against the City of Cincinnati or Chief Streicher, as there is no evidence that the alleged unconstitutional actions were taken pursuant to police or City policy.

Therefore, having reviewed this matter, and the court being otherwise advised,

IT IS ORDERED that defendants' motion for summary judgment (Doc. #11) be, and is hereby, **GRANTED IN PART** as to defendants the City of Cincinnati and Thomas Streicher, Jr., and plaintiffs' claims against those defendants are hereby **DISMISSED WITH PREJUDICE**, and the motion is **DENIED IN PART** as to the claims asserted against defendant Donald Elsaesser.

This 13th day of December, 2004.



Signed By:

William O. Bertelsman WOB

United States District Judge